

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	Case No. 1:20 CR 402
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
v.)	
)	
DANIEL J. McMAHON,)	<u>SENTENCING MEMORANDUM OF</u>
)	<u>DANIEL J. MCMAHON</u>
Defendant.)	
)	

Daniel McMahon is 52 years old. He has no prior convictions. He has never even been arrested before. He is married with three children under the age of ten. He works and supports his family and has continued to do so during the Covid pandemic. Although he contracted Covid in September, he has recovered and returned to work.

The offense of conviction – one count of bank fraud under 18 USC §1344 – relates to the failure of his homebuilding business in early 2016. Mr. McMahon founded the business in 2009, and successfully built more than 75 high-quality homes, mainly in Cleveland’s Western suburbs, and has many happy customers. But Mr. McMahon was not charging enough for the homes he built and was losing money, which lead to the business failing. In the final months of the business, December 2015 and January 2016, Mr. McMahon submitted affidavits to First Federal of Lakewood seeking draws on eight construction loans, which stated that all subcontractors had been paid in full, when they had not in fact all been paid in full. Mr. McMahon has plead guilty and admitted his wrongdoing.

After his business failed, Mr. McMahon found employment working for others, currently as a supervisor of masonry construction. He has worked hard to pay off the debts of his failed

business, has made substantial progress and continues to make the remaining payments. He is a hard and conscientious worker.

Those who known Mr. McMahon best think very highly of him. We have attached two of the letters we received on his behalf:

Tom Pratt writes that Mr. McMahon is the person in the world he is closest to, other than his wife. He speaks of Mr. McMahon's generosity, saying "there was nothing Danny wouldn't do for you" and the positive impact Mr. McMahon has had on his life: "I can truly say that personally, I am a better person because I met Danny McMahon." He believes that Mr. McMahon is a "special person" who brings "joy" to the lives of others and is "deserving of grace." (Letter of T. Pratt, Ex. A).

Dan Urban, a well-regarded attorney in Avon, Ohio, has known Mr. McMahon well for 12 years, and their families have spent much time together. He says that Mr. McMahon is a good father and husband, and a "kind and generous man," who is "charitable and giving", and "treats friends and strangers alike with the same measure of kindness and respect." As a friend, he is "loyal and caring," such that: "You will not find a better friend than Danny." (D. Urban Letter, Ex. B.)

SENTENCE

Under the plea agreement, the parties agree to recommend that the Court impose a sentence within the range of the advisory Sentencing Guidelines. As set forth in the plea agreement and the Presentence Report, that would result in a Total Offense Level of 5, with no criminal history. (PSR ¶¶21, 51).

Because the offense of conviction is a Class B felony, Mr. McMahon is not eligible for probation. (PSR ¶¶55,56). The applicable guideline imprisonment range is zero to six months. (PSR ¶51).

We respectfully request that he be sentenced to one day of imprisonment, which be deemed satisfied with credit of one day for the date he was processed in this case by the U.S. Marshalls, which was September 14, 2020. He would also be placed on Supervised Release for a period of 2 years, which is the minimum under the guidelines. (PSR ¶54). This is a sentence that complies with the sentencing guidelines and which other Courts have deemed proper. *See, e.g., United States v. Musgrave*, 647 Fed. Appx. 529 (6th Cir. 2016) (affirming sentence to 1 day of prison satisfied by time spent being processed by Marshalls). We submit that it is also the appropriate sentence here.

Mr. McMahon has accepted full responsibility for his wrongdoing in 2015 and 2016, conduct which occurred almost five years ago. Since then, he has worked hard to support his family and fulfill his financial obligations, and we submit that any additional incarceration, beyond one day with credit for the day he was processed, is not necessary to impress upon him the need never to violate the law again. We are confident that he will fully comply with any conditions of supervised release and request that he be permitted to travel out-of-state for work, which his job requires.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing *Sentencing Memorandum of Daniel J. McMahon* has been served via the Court's electronic filing system this 8th day of December, 2020.

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